IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1466 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARTIBEN N PATEL

Versus

A'BAD MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 1466 of 1999

MR YOGESH S LAKHANI for Petitioner No. 1-3
MR RM CHHAYA for Respondent No. 1
MR MR MENGDAY,AGP for Respondent No. 2
MR PREMAL R JOSHI for Respondent No. 3-4

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 15/01/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The three petitioners who are residing in Purna Kunj Apartment, situated near Ambawadi Char Rasta, Ambawadi, Ahmedabad have come out with a grievance that the respondents no. 3 and 4, without prior permission from the respondent no.1- Ahmedabad Municipal Corporation and without following due process of law and by taking law in their hands, are illegally making construction of two flats on the ground floor and pent house on the fourth floor and are also illegally making construction in Bungalow No. 9 beyond the permitted construction. The petitioners have, therefore, prayed to take action against respondents no. 3 and 4 under the provisions of B.P.M.C.Act, 1949 and to direct the respondents no. 1 and 2, their agents, servants and associates to demolish the illegal construction made by respondents no. 3 and 4 in Purna Kunj Apartment, situated in Ambawadi, Ahmedabad on Plot No. 647/9/F/102.

2. In the affidavit-in-reply filed on behalf of the respondents no. 3 and 4, it is inter alia pointed out that the petitioners are the members of a non trading association; one of the members Smt. Punam alias Purnima Kishorebhai Shah, residing in flat no. 102 has filed a suit being Civil Suit No. 563 of 1999 against the respondents for the same subject matter for which the present petitioners have filed this writ petition. The City Civil Court, in the Notice of Motion No. 323 of 1999, vide its order dated 4.2.1999, has restrained the defendants, their agents and servants or any other third party from carrying out illegal construction of any nature other than as per the plans passed by the Municipal Corporation on the land for common parking situated in the rear portion of basement of the suit scheme, namely the scheme of 9, Purna Kunj Apartment.

3. In view of this, it is clear that with respect to the same subject matter, proceedings against the present respondents no. 3 and 4 have been initiated. True, the petitioners as well as the Ahmedabad Municipal Corporation are not parties in the said civil suit, but the fact remains that the members of the non trading association have initiated proceedings against the respondents no. 3 and 4. It is not in dispute that the petitioners are also the members of the said non trading association. Learned Counsel appearing for the petitioners have stated that the petitioners would make appropriate application for being joined as a party in the civil suit pending before the City Civil Court, Ahmedabad. Similarly, the learned Counsel appearing for

Ahmedabad Municipal Corporation has also stated that the Ahmedabad Municipal Corporation will also make appropriate application for being joined as a party in the said proceedings. Since the injunction order is already in operation against respondents no. 3 and 4, no useful purpose will be served by allowing the present proceedings to continue. We accordingly dispose of this petition without entering into the merits of the case with liberty to the petitioners as well as to respondents no. 1 and 2 to make appropriate application before the City Civil Court, Ahmedabad to implead them as parties in Civil Suit No. 563 of 1999.

Rule is accordingly discharged with no order as to costs.

(Kshitij R.Vyas,J.)

(Sharad D.Dave,J.)

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